

**OPINION  
57-26**

January 4, 1957        (OPINION)

CITIES

RE:   General Fund - Permissive Expenditure - Culverts

This is in reply to your letter of December 21 and December 5, 1956, requesting opinion of this office in regard to whether the city commission of your city may pay for the cost of installation of a specified culvert and the culvert itself out of general funds.

Section 40-0501, subsection 23, of the N.D.R.C. of 1943 provides as follows:

"The governing body of a municipality shall have the power:  
\* \* \*

"3. CULVERTS, DRAINS, CESSPOOLS. To construct and keep in repair culverts, drains, sewers, catch basins, manholes, cesspools, vaults, cisterns, areas and pumps within the corporate limits." \* \* \* \* ."

The pertinent portion of section 40-2201 of the 1953 Supplement to the N.D.R.C. of 1943 provides:

"POWER OF MUNICIPALITIES TO DEFRAY EXPENSE OF IMPROVEMENTS BY SPECIAL ASSESSMENT. Any municipality, upon complying with the provisions of this chapter may defray the expense of any or all of the following improvements by special assessments; \* \* \*."  
(Underlining ours)

Note that said section 40-2201 uses the permissive word "may" as opposed to the mandatory "shall". Note, further, that there is no provision in chapter 40-22 of the N.D.R.C. of 1943 substantially similar to the provisions of section 40-3107 of the N.D.R.C. of 1943 as amended by chapter 272 of the 1955 Session Laws, that:

"Except as otherwise provided in this chapter, a city shall not be liable generally on any contract for the building or repairing of curbing and shall not be required to pay funds raised by general taxation upon any such contract."

We find no further pertinent statutory provisions. We find the following general statement in Volume 5, page 1334, section 2337, McQuillin Municipal Corporations, second edition:

"Municipal funds are either general or special funds and ordinarily general funds may be appropriated by the council to any municipal object. So when there is no requirement by statute or otherwise that money coming into the city treasury shall be kept in a special fund and applied to a particular purpose, it is proper, of course, to place it in the general fund, and to use it for general city purpose. \* \* \*"

Therefore, looking to the above, we find that the construction and repair of culverts is a proper municipal object, by virtue of the above quoted portion of section 40-0501. The special assessment statute to which you call our attention, Chapter 40-22 of the N.D.R.C. of 1943, as amended to date, is worded permissively rather than mandatorily and contains no express prohibition of using the general taxing power of the municipality to effect the purposes for which the provisions of said chapter 40-22 can be applied. It is, therefore, our conclusion that the city may properly use general fund moneys for this purpose.

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Attorney General